

Exhibit B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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In Re: Fisher-Price Rock 'n Play
Sleeper Marketing, Sales Practices,
and Products Liability Litigation

19-MD-2903 (GWC)

Rochester, New York
December 9, 2019
10:09 a.m.

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STATUS CONFERENCE

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE GEOFFREY W. CRAWFORD
UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF: WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
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10:32AM 1 **THE COURT:** So if we could put some meat on the
2 bones. Could you -- I think all of this relates to
3 commonality type problems, gets expressed --

4 **MS. BASAR:** Correct.

10:32AM 5 **THE COURT:** -- in different ways through the
6 categories of the class action criteria. But, really, it has
7 to do with common questions of fact.

8 **MS. BASAR:** Sure.

9 **THE COURT:** What are the arguments -- you're going
10:32AM 10 to get -- and defendant's been very clear about this --
11 you're going to get everything that left the company and went
12 out to the public. That's easy.

13 What are the arguments about commonality that you
14 need to make that you need the internal marketing memos for?

10:32AM 15 **MS. BASAR:** Yes. We need to show that there are
16 common questions about this --

17 **THE COURT:** Right.

18 **MS. BASAR:** -- that the products, that the
19 marketing statements were false or they were written in a way
10:32AM 20 that they were misleading or that they omitted material
21 facts. In order to get -- to be able to show that there's
22 common evidence of that, we need to show that defendants knew
23 that the product was unsafe. I mean, the whole underlying
24 theory of our case is --

10:33AM 25 **THE COURT:** Right.

10:33AM 1 **MS. BASAR:** -- is that this product is unsafe for
2 infant sleep, defendants knew about it and they had reason to
3 know about it from the AAP guidelines, et cetera, and they,
4 nonetheless, continued to sell it for ten years and continued
10:33AM 5 to make money from it.

6 So, one element is to actually show that defendants
7 knew that in order to show that their statements are false
8 and misleading.

9 The other thing we need to show which is extremely
10:33AM 10 important is materiality. Were their marketing statements
11 material? The box said sleeper and the name of the product
12 is the market -- is the Rock 'n Play Sleeper. We say that's
13 material.

14 The defendants indicated at the last hearing that
10:34AM 15 they're going to challenge that. They're going to challenge
16 materiality based on how people interpret it, their marketing
17 statements. Fine. We need to come forward with affirmative
18 evidence not only to first make our case but to rebut their
19 evidence.

10:34AM 20 So they will have, as your Honor's mentioning,
21 market research studies concerning how people will --
22 reasonable consumers -- will interpret their marketing
23 statements and they will have internal documents showing, you
24 know, how they wanted to position this product. Is it going
10:34AM 25 to be a sleeper for all night sleep or just sleep that's safe

10:39AM 1 **MS. BASAR:** But we need to present a full record to
2 the Court and we, unfortunately, given the defendant's lack
3 of cooperation, frankly, over the past month, if you're, if
4 there is some kind of order that says, well, you know, just
10:39AM 5 relating to marketing but since you're, once your -- with
6 defendant's knowledge and scienter is, you know, has to be a
7 common, what would be a common question, we believe based on
8 our prior experience with the defendants over the past month,
9 that they will take that to mean, okay, we don't need to give
10:40AM 10 you any marketing materials --

11 **THE COURT:** Right.

12 **MS. BASAR:** -- that could possibly show that, you
13 know, defendants had knowledge that this product was unsafe.
14 And the question of defectiveness. We used that word and we
10:40AM 15 all were happy with that word. But this is not that kind of
16 case. This is not a car that if it's defective and they
17 agree that it's dangerously defective, that, you know, that
18 would cover the a big part of the case. This is about a
19 product that is unsafe for infant sleep. We say throughout
10:40AM 20 the class period. We say it's unsafe for infant sleep when
21 used as instructed with the restraints.

22 **THE COURT:** Let me just keep focusing on your three
23 issues. I understand what the record that you want on -- I
24 call it scienter but it's probably the wrong word -- but
10:41AM 25 state of mind of the company, materiality of the information